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Interpretation of Labor-Management Reporting and Disclosure Act

EXTENSION OF REMARKS

OF

HON. CARROLL D. KEARNS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 14, 1959

Mr. KEARNS. Mr. Speaker, section 8(e) of the Labor-Management Reporting and Disclosure Act makes it an unfair labor practice for a labor organization and an employer to enter into any agreement whereby the employer ceases or refrains or agrees to cease or refrain from doing business with any other person. The act makes such agreements void. The section provides, however, that the prohibition against such agreements does not apply to the construction industry relating to work to be done at the construction site. My attention has been called to a statement in the Appendix of the CONGRESSIONAL RECORD by Senator MCNAMARA on September 14—page A8141—to the effect that, in his opinion, the prohibition on hot cargo agreements was not intended to prohibit a fabrication-type clause where the work of fabrication could be done or performed at the jobsite. This view of Senator MCNAMARA does not coincide with mine. In my opinion it is contrary to the clear and literal meaning of the act and would, if accepted, open up a Pandora's box of evils in the construction industry which Congress meant to eliminate, not only in the Reporting Act but in the Taft-Hartley Act as well.

The Senate bill merely outlawed hot cargo agreements with common carriers. The House amendment interdicted agreements not to do business with another entered into by any employer. At the time of the consideration of this amendment there had been some discussion of a proposal to permit unions to picket a construction site if they had disputes with any contractor on the job. It was partly in this frame of reference that the proviso to section 8(e) was written which provides—

> That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of construction.

As in the common-situs picketing problem, it was the location of the work that we had in mind and, as a reasonable compromise, we provided that the agreement must relate to work actually done at the site. Work done or products manufactured, processed, fabricated, and so forth by another employer away from the construction site could not be subject to a hot cargo agreement. It was not intended to restrict an employer's freedom to do business or purchase from any other person and to decide in what form the product or materials shall arrive on the job. Furthermore, to interpret the proviso to cover any work or product which could be done at the site would permit restrictions on the installation of many other products besides prefabricated pipe which arrive on the job in prefabricated form. This certainly was not in my mind.

The conference report supports my view. It states, at page 39, that the proviso in question relates only and exclusively to the contracting or subcontracting of work to be done at the site of construction and that it does not exempt from section 8(e) agreements relating to supplies or other products or materials shipped to the site of construction. The legislative history in the Senate is also in accord with my view. On September 3, 1959, Senator KENNEDY, in reporting the conference agreement to the Senate, said at page 16415 of the RECORD:

> It should be particularly noted that the proviso relates only to the "contracting or subcontracting of work to be done at the site of the construction." The proviso does not cover boycotts of goods manufactured in an industrial plant for installation at the jobsite, or suppliers who do not work at the jobsite.

Senator MORSE also said, on the same day at page 16399 of the RECORD, in referring to the hot cargo amendment:

> First. It would prevent a union from protecting the bargaining unit it represents by obtaining an agreement not to subcontract work normally performed by employees in the unit.

The Senate Committee on Labor and Public Welfare printed a section by section analysis of the act, published September 10, 1959, and stated with respect to the section in question that the prohibition against hot cargo agreements does not apply to the construction industry relating to work to be done at the construction site.

It seems clear to me, therefore, that an employer, even in the construction industry, retains the freedom to choose how the products or materials he utilizes shall arrive on the job—prefabricated or not—and that such freedom cannot be restricted by agreements with labor organizations.

Mutual Security Appropriation Conference Report

SPEECH

OF

HON. GEORGE MEADER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 14, 1959

Mr. MEADER. Mr. Speaker, I voted against the conference report on the Mutual Security Appropriation bill because I protest the conferees' compromose on the Hardy amendment.

Through the years I have supported the mutual security program and adequate appropriations to carry out its necessary and appropriate functions. But I think the conferees should not have yielded to executive pressures with respect to the phraseology contained in the Hardy amendment, which would have assured effective enforcement of the right of the Congress to complete and accurate information about the expenditure of foreign aid funds.

I believe the bill should have been sent back to conference with instructions to stand fast in upholding the basic prerogatives and necessary factfinding powers of the Congress, as provided in the Hardy amendment.

Mr. Speaker, I believe it is important to point out exactly what we have done and what we have not done in our final action on the Hardy amendment:

First, the Hardy amendment, even in its tattered and decimated form does establish the principle that the Congress may employ the power of the purse to compel personnel in the executive branch of the Government to honor requests for information by the Congress, its committees, and the General Accounting Office through imposing limitations on the use of appropriated funds.

Second, the watered down phraseology accepted by the conferees is not a recognition by the Congress of the alleged doctrine of executive privilege but rather it indicates only that the Congress, in its wisdom, has refrained from exercising its full power to obtain information from the executive branch of the Government.

Although I am sympathetic with the conferees who were subjected to great pressure, I disagree with what appears to be their retreat in this important area of effective scrutiny by congressional committees of expenditures in the executive branch of Government. Therefore, I was compelled to vote against the conference report.

However, let me hasten to add, Mr. Speaker, that I fully appreciate that we have established in law a foundation upon which to build in the future an effective means of obtaining facts with respect to the public business within the possession of executive agencies, without which the Congress cannot intelligently and wisely discharge its policymaking responsibilities.

Mutual Security Appropriation Conference Report

SPEECH

OF

HON. PORTER HARDY, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 14, 1959

Mr. HARDY. Mr. Speaker, the gentleman from Michigan has expressed very clearly many of my own misgivings about the changes to which the conferees have agreed in the language of my amendment. I am disappointed that there has been some yielding in phraseology and for that reason, I too felt that the conference report should be defeated and the original House language should be insisted upon. In voting against the conference report, I want to make it clear that I am not opposing the mutual security appropriation.